

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Andrew Barnett,

Plaintiff

v.

Pigonely Inc., et. al.,

Defendants

Case No. 2:23-cv-00659-JAD-BNW

**Order Dismissing
and Closing Case**

ECF No. 2

Plaintiff Andrew Barnett brings this civil-rights lawsuit to redress constitutional violations that he claims he suffered while detained at the Polk County Jail in Oregon. On September 21, 2023, this court ordered Barnett to update his address by October 20, 2023.¹ That deadline expired without an updated address from the plaintiff, and his mail from this court is being returned as undeliverable.²

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.³ A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules.⁴ In determining whether to dismiss an action on one of these grounds, the court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to

¹ ECF No. 4.

² ECF No. 5.

³ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

⁴ *See Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order).

1 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
 2 disposition of cases on their merits; and (5) the availability of less drastic alternatives.⁵

3 The first two factors, the public’s interest in expeditiously resolving this litigation and the
 4 court’s interest in managing its docket, weigh in favor of dismissal of the plaintiff’s claims. The
 5 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
 6 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
 7 ordered by the court or prosecuting an action.⁶ The fourth factor—the public policy favoring
 8 disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

9 The fifth factor requires the court to consider whether less drastic alternatives can be used
 10 to correct the party’s failure that brought about the court’s need to consider dismissal.⁷ Courts
 11 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must
 12 explore possible and meaningful alternatives.”⁸ Because this action cannot realistically proceed
 13 without the ability for the court and the defendants to send plaintiff case-related documents,
 14 filings, and orders, the only alternative is to enter a second order setting another deadline. But
 15 without an updated address, the likelihood that the second order would even reach the plaintiff is
 16 low, so issuing a second order will only delay the inevitable and further squander the court’s

18 ⁵ *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
 19 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

20 ⁶ *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

21 ⁷ *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less
 22 drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);
 23 *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the
 persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic
 alternatives prior to disobedience of the court’s order as satisfying this element[.]” i.e., like the
 “initial granting of leave to amend coupled with the warning of dismissal for failure to
 comply[.]” have been “eroded” by *Yourish*).

⁸ *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).

1 finite resources. Setting another deadline is not a meaningful alternative given these
2 circumstances. So the fifth factor favors dismissal.

3 Having thoroughly weighed these dismissal factors, I find that they weigh in favor of
4 dismissal. IT IS THEREFORE ORDERED that **THIS ACTION IS DISMISSED** without
5 prejudice based on the plaintiff's failure to file an updated address in compliance with this
6 Court's September 21, 2023, order, and the motion for leave to proceed *in forma pauperis*
7 **[ECF No. 2] is DENIED as moot.** The Clerk of Court is directed to **ENTER JUDGMENT**
8 accordingly and **CLOSE THIS CASE.** If Andrew Barnett wishes to pursue his claims, he must
9 file a complaint in a new case and provide the court with his current address.

10 Dated: October 23, 2023

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13 U.S. District Judge Jennifer A. Dorsey
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